

UNITED STATES COURT OF INTERNATIONAL TRADE

BEFORE: SENIOR JUDGE NICHOLAS TSOUCALAS

NTN BEARING CORPORATION OF AMERICA,
AMERICAN NTN BEARING MANUFACTURING
CORPORATION and NTN CORPORATION;
NSK LTD. and NSK CORPORATION;
KOYO SEIKO CO., LTD. and KOYO
CORPORATION OF U.S.A.,

Plaintiffs and
Defendant-Intervenors,

$$V_{\bullet}$$

UNITED STATES,

Defendant,

and

THE TIMKEN COMPANY,

Defendant-Intervenor
and Plaintiff.

Consol. Court No.
98-01-00146

ORDER

On the above-captioned matter, the Court received the following: (a) Draft Results of Redetermination Pursuant to Court Remand ("Draft Results") in NTN Bearing Corp. v. United States, 26 CIT ___, 186 F. Supp. 2d 1257 (2002), and Final Results of Redetermination Pursuant to Court Remand ("Remand Results") in NTN Bearing Corp. v. United States, 26 CIT ___, 186 F. Supp. 2d 1257 (2002), issued by the United States Department of Commerce, International Trade Administration ("Commerce"); (b) Comments

Regarding the Remand Determination ("Preliminary Comments") by NTN Bearing Corporation of America, American NTN Bearing Manufacturing Corporation and NTN Corporation ("NTN") dated July 15, 2002, and addressing Commerce's Draft Results; and (c) a letter by The Timken Company ("Timken") of July 24, 2002, advising the Court of Timken's intent to file comments in response to those comments that might be filed by NTN in response to Commerce's Remand Results, and Timken's response to NTN's comments regarding Commerce's Remand Results dated August 5, 2002.¹

In its Preliminary Comments, NTN asserts that Commerce erred in refusing to exclude those sales where the gross unit price plus billing adjustment equaled zero from NTN's dumping margin. NTN maintains that the Court's order that mandated Commerce to exclude NTN's zero-priced sales from NTN's dumping margin should have encompassed NTN's zero-priced sales as well as those NTN's sales where the gross unit price plus billing adjustment equaled zero. Pointing to the fact that NTN's margin was raised, rather than

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Timken's response addresses the arguments raised by NTN in Preliminary Comments as if these comments were submitted by NTN in response to Commerce's Remand Results. The Court assumes that Timken's actions are caused by NTN's failure to submit NTN's response to Commerce's Remand Results. In the fashion analogous to that of Timken, the Court assumes that NTN's failure to submit comments to Commerce's Remand Results: (a) constitutes a waiver of NTN's right to submit comments to Commerce's Remand Results; and (b) indicates NTN's desire to stand by the arguments raised by NTN in NTN's Preliminary Comments.

lowered, after Commerce has made Commerce's recalculation, NTN concludes that the abnormality of such effect is a per se indication of Commerce's misinterpretation of the Court's order. Commerce contends that Commerce's actions were in accordance with the Court's order remanding the underlying case, and Timken supports Commerce's position.

The Court agrees with Commerce and Timken. Indeed, a zero-priced sale (that is, a transaction made inherently for no consideration) is a form of business dealing that is entirely different in nature from a sale where the gross unit price plus billing adjustment equaled zero (that is, a transaction made for a consideration that was eventually offset by an adjustment given for certain business reasons). Furthermore, the fact that NTN's margin rose as a result of Commerce's recalculation has absolutely no relevance to the issue of interpretation of the Court's mandate, since the change in margin was caused by Commerce's correction of a ministerial error.² Therefore, this Court, having received and reviewed the aforesaid documents holds that Commerce duly complied

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Commerce initially relied on incorrect cost of production data provided by NTN. Commerce corrected this oversight and, consequently, recalculated NTN's margin for Commerce's Remand Results. Had NTN been unhappy with Commerce's recalculation, NTN should have asserted its grievances accordingly. The Court, however, fails to fancy a viable legal theory which prohibits an agency from correcting its calculative error as long as the agency applies the correct legal principle.

with the Court's remand order, and it is hereby

ORDERED that the Remand Results are affirmed in their entirety; and it is further

ORDERED that since all other issues have been decided, this case is dismissed.

NICHOLAS TSOUCALAS
SENIOR JUDGE

Dated: August 12, 2002
New York, New York